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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Amendment of Parts 2 and 90 of the)	PR Docket No. 89-553
Commission's Rules to Provide for)	
to Use of 200 Channels Outside)	
the Designated Filing Area in the)	DOCKET FILE COPY ORIGINAL
896-901 MHz and the 935-940 MHz)	
Bands Allotted to the Specialized)	
Mobile Radio Pool)	
)	
Implementation of Section 309(j))	PP Docket No. 93-253
of the Communications Act—)	
Competitive Bidding)	
)	
Implementation of Sections 3(n))	GN Docket No. 93-252
and 332 of the Communications Act)	

To: The Commission

**COMMENTS UPON EMERGENCY PETITION FOR RECONSIDERATION
AND/OR WAIVER OF ACTIVITY RULES**

CELSMeR, by its attorneys, hereby files its comments upon the Emergency Petition for Reconsideration and/or Waiver of Activity Rules dated September 21, 1995, as supplemented by an ex parte filing dated September 29, 1995 (collectively, the "RAM Emergency Petition") filed by RAM Mobile Data USA Limited Partnership ("RAM") in the captioned proceeding. As a small 900 MHz incumbent operator primarily interested in a discrete and limited geographic area when bidding at the MTA 900 MHz SMR auction, CELSMER has standing to comment upon the RAM Emergency Petition.

**I. The Current Activity Rules Are Irrational and
Emergency Action Is Needed**

After reviewing the Commission's Second Order on Reconsideration and Seventh Report and Order, FCC 95-395, released September 14, 1995 and published in the Federal Register September 21, 1995 ("2nd Recon Order") along with the RAM Emergency Petition, CELSMER has concluded that the current activity rules have no rational basis and, if implemented without changes along the lines suggested by RAM, will skew the auction significantly, irrationally raising the price of encumbered spectrum and lowering the price for unencumbered spectrum. Moreover, unless the Commission grants relief along the lines suggested by RAM, the Commission will be punishing incumbent operators and rewarding non-incumbent greenmailers and boilerrooms.¹

As outlined in the RAM Emergency Petition, the current activity rules obligate national filers such as RAM and Geotek, that may be primarily interested in bidding upon frequency blocks where they are the incumbent but that require the flexibility to bid on unencumbered blocks (if their incumbent blocks are actually bid higher than the unencumbered blocks) to "park" their excess

¹ In its Public Notice announcing the 900 MHz auction released September 15, 1995, and again at pages 84 and 85 of the Preliminary 900 MHz SMR Auction Bidder Information Package, the Commission noted the possibility of deceptive sales solicitations with respect to the 900 MHz SMR auction. Given the Commission's stated antipathy to the "unscrupulous entrepreneurs [that] may attempt to use the 900 MHz SMR auction to deceive and defraud unsuspecting investors," and given that the current activity rules could benefit such "unscrupulous entrepreneurs" at the expense of incumbent operators, the current activity rules are particularly inappropriate.

activity units in every round of the auction so long as they remain high bidder on their incumbent spectrum, keeping that excess activity in reserve and available on the chance that their encumbered blocks may be bid higher than unencumbered blocks in future rounds. There is only one place that such a national bidder will "park" the excess activity units. That place is on another license that the national bidder does not want to win and that therefore the bidder hopes will be the subject a higher bid in a subsequent round. In the meantime, despite its efforts to "park" excess activity units, the national bidder that is doing the parking will inevitably lose some number of its activity units, meaning that when, in subsequent rounds, the bidding starts to increase on the more valuable unencumbered spectrum, that bidder will be unable to submit a higher bid due to an artificially-reduced activity level from earlier rounds. As a result, in the end the auction will result in a higher price for encumbered spectrum, whether it is acquired by the incumbent or by a greenmailer intent on eliciting funds from the incumbent in return for consent to make even routine modifications; and it will result in a lower price for the more valuable unencumbered spectrum, because some of the eligible bidders will have lost their activity eligibility in earlier rounds and be unable to submit higher bids in the later stages of the auction when strategies have been revealed.

Overall, the public will lose out because the increase in the price of encumbered spectrum will probably not be sufficient to

offset the decrease in the price of unencumbered spectrum. Of course, that the public have lost out will be of little comfort to incumbents such as CELSMER that have been subjected a skewed auction on their incumbent spectrum. Therefore, it is absolutely essential that the Commission immediately act to adjust its activity rules to do away with any incentive for the "parking" of activity units.

II. Specific Comment On The RAM Proposal

As CELSMER understands it, RAM's latest proposal is outlined in the September 29, 1995 filing. Except as otherwise specifically set forth below, CELSMER supports that filing. In particular, CELSMER emphasizes that the Commission must make this into an "automatic waiver" of the activity rules, so that a bidder such as RAM or Geotek will know in advance that it is entitled to the waiver and that there is no discretion on the part of the FCC staff to withhold the waiver if the requirements therefor have been met.

The one point where CELSMER differs from RAM is that CELSMER believes there is no basis for having a "di minimis standard," as an automatic waiver is justified any time that a more encumbered (and therefore less valuable absent greenmail) block is valued more highly than a less encumbered block. Eliminating this di minimis standard not only simplifies the automatic waiver process, it probably simplifies the task of writing software to accommodate it. Therefore, with reference to the proposed new Section II.D to bidding procedures as set forth in RAM's September 29, 1995 letter, proposed Section D.(3) would read as follows:

The high bid for a "less encumbered block" in the same MTA is lower than the high bid for the "more encumbered block" referenced in condition (1);

CELSMeR understands that the Commission intends to issue a final bidder information package very soon with respect to the 900 MHz SMR auction. CELSMeR requests that the Commission act to grant RAM's petition (as modified by CELSMeR's suggestions herein) this week, so that the revised activity rule discussion can be included in the bidder information package. The failure to do so will cause irreparable harm to CELSMeR and to similarly-situated incumbent 900 MHz SMR operators. The damage would be of such a nature that it could not be remedied by any post-auction remedy crafted by a court or by the FCC. Accordingly, it is imperative that the Commission act expeditiously and decisively.

Respectfully submitted,

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October 3, 1995

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CERTIFICATE OF SERVICE

I, JacLyn Freeman, a secretary at the law firm of Brown Nietert & Kaufman, Chartered, do hereby certify that I caused a copy of the foregoing "Comments upon Emergency Petition for Reconsideration and/or Waiver of Activity Rules" to be hand delivered this 3rd day of October, 1995 to each of the following:

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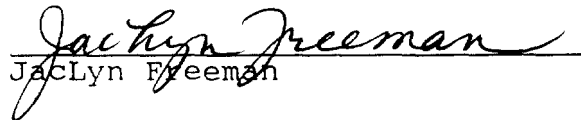
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*Via First-Class Mail